

SENATE BILL No. 221

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-19; IC 23-20-1; IC 34-30-2-96.1.

Synopsis: Securities and financial protection. Defines "qualified individual" as an individual associated with a broker-dealer who serves in a supervisory, compliance, or legal capacity as part of the individual's job. Provides that "protective agencies" refers to the adult protective services unit and the securities commissioner. Requires that a qualified individual who has reason to believe that financial exploitation of an endangered adult has occurred, has been attempted, or is being attempted shall make a report and notify the protective agencies. Allows a qualified individual to refuse a request for disbursement of funds from an account: (1) owned by an endangered adult; or (2) of which an endangered adult is a beneficiary or beneficial owner; if the qualified individual has reason to believe that the requested disbursement will result in financial exploitation of the endangered adult. Establishes requirements for notification by a broker-dealer or qualified individual if a qualified individual refuses a request for disbursement of funds. Provides for expiration of the refusal of disbursement. Provides broker-dealers and qualified individuals certain immunity from civil liability. Allows broker-dealers to provide to certain entities access to or copies of records relevant to a suspected financial exploitation. Requires the securities commissioner to develop and make available on the secretary of state's Internet web site information that includes training resources to assist in the prevention and detection of financial exploitation of endangered adults. Changes deposits into the securities division enforcement account and state general fund from 50%, to each fund, of the first \$2,000,000 of amounts recovered from: (1) civil penalties; (2) settlements of actions;

(Continued next page)

Effective: July 1, 2016.

Eckerty

January 6, 2016, read first time and referred to Committee on Civil Law.



and (3) judgments awarded; in the enforcement of the securities law to 50%, to each fund, of the first \$4,000,000. Specifies that any amount exceeding \$4,000,000 is deposited into the state general fund. Requires that the first 10% of funds recovered by or on behalf of the state related to securities violations must be deposited in the securities restitution fund. (Current law requires the first 5%.) Amends the definition of "out-of-pocket loss" for purposes of determining a restitution assistance award. Increases the maximum amount of assistance from the securities restitution fund from the lesser of \$15,000 or 25% of the amount of out-of-pocket loss to the lesser of \$25,000 or 25% of the amount of out-of-pocket loss.



Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 221

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-19-4.1 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]:

4 **Chapter 4.1. Senior Savings Protection**

5 **Sec. 1. As used in this chapter, "endangered adult" means an**
6 **individual to whom one (1) or more of the following apply:**

7 **(1) The individual is at least sixty (60) years of age.**

8 **(2) The individual is:**

9 **(A) at least eighteen (18) years of age; and**

10 **(B) incapable, by reason of:**

11 **(i) mental illness;**

12 **(ii) intellectual disability;**

13 **(iii) dementia;**

14 **(iv) habitual drunkenness;**

15 **(v) excessive use of drugs; or**



(vi) other physical or mental incapacity;
 of managing or directing the management of the
 individual's property or providing or directing the
 provision of self-care.

Sec. 2. As used in this chapter, "financial exploitation" means
 the wrongful or unauthorized taking, withholding, appropriation,
 or use of money, real property, or personal property of an
 endangered adult.

Sec. 3. As used in this chapter, "immediate family member"
 means a spouse, child, parent, or sibling.

Sec. 4. As used in this chapter, "protective agencies" refers to
 both the following:

- (1) The adult protective services unit described in
 IC 12-10-3-1.
- (2) The commissioner.

Sec. 5. As used in this chapter, "qualified individual" means an
 individual associated with a broker-dealer who serves in a
 supervisory, compliance, or legal capacity as part of the
 individual's job.

Sec. 6. (a) If a qualified individual has reason to believe that
 financial exploitation of an endangered adult has occurred, has
 been attempted, or is being attempted, the qualified individual
 shall:

- (1) make a report to an entity listed in IC 12-10-3-10(a); and
- (2) notify the commissioner.

(b) After a qualified individual makes a report and provides
 notification under subsection (a), the qualified individual may
 notify any of the following concerning the qualified individual's
 belief:

- (1) An immediate family member of the endangered adult.
- (2) A legal guardian of the endangered adult.
- (3) A conservator of the endangered adult.
- (4) A trustee, cotrustee, or successor trustee of the account of
 the endangered adult.
- (5) An agent under a power of attorney of the endangered
 adult.
- (6) Any other person permitted under existing laws, rules, or
 regulations.

Sec. 7. (a) A qualified individual may refuse a request for
 disbursement of funds from an account:

- (1) owned by an endangered adult; or
- (2) of which an endangered adult is a beneficiary or beneficial



owner;
 if the qualified individual has reason to believe that the requested disbursement may result in financial exploitation of the endangered adult.

(b) If a qualified individual refuses a request for disbursement under subsection (a), a broker-dealer involved in the transaction or the qualified individual shall:

(1) subject to subsection (c), make a reasonable effort to notify all parties authorized to transact business on the account:

(A) orally; or

(B) in writing by:

(i) electronic communication; or

(ii) mail postmarked;

not more than two (2) business days after the qualified individual refuses the request for disbursement; and

(2) notify the protective agencies:

(A) orally; or

(B) in writing by:

(i) electronic communication; or

(ii) mail postmarked;

not more than three (3) business days after the qualified individual refuses the request for disbursement.

(c) A broker-dealer or the qualified individual described in subsection (b) is not required to contact a party authorized to transact business on the account if the broker-dealer or qualified individual has reason to believe that the party has engaged in suspected or attempted financial exploitation of the endangered adult.

(d) Unless a court or the commissioner enters an order extending the refusal of disbursement or providing any other applicable protective relief, any refusal of disbursement under this section expires upon the earlier of the following:

(1) The date that the qualified individual has reason to believe that the disbursement will not result in financial exploitation of the endangered adult.

(2) Fifteen (15) business days after the date of the initial refusal of disbursement by the qualified individual.

(e) A court with jurisdiction may enter an order that:

(1) extends a refusal of disbursement; or

(2) provides for any other protective relief.

(f) After:

(1) a broker-dealer or qualified individual provides notice



under subsection (b); and

(2) the refusal of disbursement has expired or a court or the commissioner has entered an order as described in subsection (d);

the broker-dealer or qualified individual shall notify, in writing, the protective agencies of the expiration of the refusal of disbursement or the order of the court or commissioner.

Sec. 8. Notwithstanding any other provision of law, a broker-dealer or a qualified individual who, in good faith and exercising reasonable care, complies with section 6 or 7 of this chapter, is immune from any civil liability for actions taken in accordance with those sections.

Sec. 9. (a) A broker-dealer may provide to protective agencies or law enforcement access to or copies of records that are relevant to the suspected financial exploitation of an endangered adult. The records may include records relating to:

(1) disbursement of any funds from an account of the endangered adult; and

(2) disbursements of funds that comprise the suspected financial exploitation of an endangered adult.

(b) All records made available to the protective agencies under this section are confidential under IC 5-14-3.

Sec. 10. Not later than September 1, 2017, the commissioner shall develop and make available on the secretary of state's Internet web site information that includes training resources to assist broker-dealers and qualified individuals in the prevention and detection of financial exploitation of endangered adults. The training resources must include information on:

(1) indicators of financial exploitation of endangered adults; and

(2) the potential steps broker-dealers and qualified individuals can take, under Indiana law, to prevent suspected financial exploitation of endangered adults.

Sec. 11. The commissioner may adopt rules under IC 23-19-6-5 to implement this chapter.

SECTION 2. IC 23-19-6-1, AS AMENDED BY P.L.160-2015, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. (a) This article shall be administered by a division of the office of the secretary of state. The secretary of state shall appoint a securities commissioner who shall be responsible for the direction and supervision of the division and the administration of this article under the direction and control of the secretary of state. The



1 salary of the securities commissioner shall be paid out of the funds
2 appropriated for the administration of this article. The commissioner
3 shall serve at the will of the secretary of state.

4 (b) The secretary of state:

5 (1) shall employ a chief deputy, attorneys, a senior investigator,
6 a senior accountant, and other deputies, investigators,
7 accountants, clerks, stenographers, and other employees necessary
8 for the administration of this article; and

9 (2) shall fix their compensation with the approval of the budget
10 agency.

11 (c) It is unlawful for the commissioner or an officer, employee, or
12 designee of the commissioner to use for personal benefit or the benefit
13 of others records or other information obtained by or filed with the
14 commissioner that is not public under section 7(b) of this chapter. This
15 article does not authorize the commissioner or an officer, employee, or
16 designee of the commissioner to disclose the record or information,
17 except in accordance with section 2, 7(c), or 8 of this chapter.

18 (d) This article does not create or diminish a privilege or exemption
19 that exists at common law, by statute or rule, or otherwise.

20 (e) Subject to IC 4-2-6-15, the commissioner may develop and
21 implement investor education initiatives to inform the public about
22 investing in securities, with particular emphasis on the prevention and
23 detection of securities fraud. In developing and implementing these
24 initiatives, the commissioner may collaborate with public and nonprofit
25 organizations with an interest in investor education. The commissioner
26 may accept a grant or donation from a person that is not affiliated with
27 the securities industry or from a nonprofit organization, regardless of
28 whether the organization is affiliated with the securities industry, to
29 develop and implement investor education initiatives. This subsection
30 does not authorize the commissioner to require participation or
31 monetary contributions of a registrant in an investor education
32 program.

33 (f) The securities division enforcement account is established. Fees
34 and funds of whatever character accruing from the administration of
35 this article shall be accounted for by the secretary of state and shall be
36 deposited with the treasurer of state to be deposited by the treasurer of
37 the state in either the state general fund or the securities division
38 enforcement account. Subject to IC 4-2-6-15, expenses incurred in the
39 administration of this article shall be paid from the state general fund
40 upon appropriation being made for the expenses in the manner
41 provided by law for the making of those appropriations. The following
42 shall be deposited by the treasurer of state in the securities division



- 1 enforcement account:
- 2 (1) Grants and donations received under subsection (e).
- 3 (2) Costs of investigations recovered under section 4(e) of this
- 4 chapter.
- 5 (3) Fifty percent (50%) of the first ~~two~~ **four** million dollars
- 6 ~~(\$2,000,000): (\$4,000,000):~~
- 7 (A) of a civil penalty recovered under section 3(b) or 4(d) of
- 8 this chapter;
- 9 (B) recovered in a settlement of an action initiated to enforce
- 10 this article; or
- 11 (C) awarded as a judgment in an action to enforce this article.
- 12 (g) The following shall be deposited by the treasurer of state in the
- 13 state general fund:
- 14 (1) Fifty percent (50%) of the first ~~two~~ **four** million dollars
- 15 ~~(\$2,000,000): (\$4,000,000):~~
- 16 (A) of a civil penalty recovered under section 3(b) or 4(d) of
- 17 this chapter;
- 18 (B) recovered in a settlement of an action initiated to enforce
- 19 this article; or
- 20 (C) awarded as a judgment in an action to enforce this article.
- 21 (2) Any amount exceeding ~~two~~ **four** million dollars ~~(\$2,000,000):~~
- 22 **(\$4,000,000):**
- 23 (A) of a civil penalty recovered under section 3(b) or 4(d) of
- 24 this chapter;
- 25 (B) recovered in a settlement of an action initiated to enforce
- 26 this article; or
- 27 (C) awarded as a judgment in an action to enforce this article.
- 28 (3) Other fees and revenues that are not designated for deposit in
- 29 the securities division enforcement account or the securities
- 30 restitution fund.
- 31 (h) Notwithstanding IC 23-2-2.5-34, IC 23-2-2.5-43, IC 23-2-5-7,
- 32 IC 23-19-4-12, IC 25-11-1-15, and this chapter, ~~five percent (5%) of~~
- 33 ~~funds received for deposit in the securities division enforcement~~
- 34 ~~account the first ten percent (10%) of any and all funds recovered~~
- 35 ~~by or on behalf of the state attributable to or arising out of actions~~
- 36 ~~relating to violations of this article shall instead be deposited in the~~
- 37 ~~securities restitution fund established by IC 23-20-1-25. Subject to~~
- 38 ~~IC 4-2-6-15, the funds deposited in the enforcement account shall be~~
- 39 ~~available, with the approval of the budget agency:~~
- 40 (1) to augment and supplement the funds appropriated for the
- 41 administration of this article; and
- 42 (2) for grants and awards to nonprofit entities for programs and



activities that will further investor education and financial literacy in the state.

The funds in the enforcement account do not revert to the state general fund at the end of any state fiscal year.

(i) In connection with the administration and enforcement of this article, the attorney general shall render all necessary assistance to the commissioner upon the commissioner's request, and to that end, the attorney general shall employ legal and other professional services as are necessary to adequately and fully perform the service under the direction of the commissioner as the demands of the securities division shall require. Expenses incurred by the attorney general for the purposes stated in this subsection shall be chargeable against and paid out of funds appropriated to the attorney general for the administration of the attorney general's office. The attorney general may authorize the commissioner and the commissioner's designee to represent the commissioner and the securities division in any proceeding involving enforcement or defense of this article.

(j) Neither the secretary of state, the commissioner, nor an employee of the securities division shall be liable in their individual capacity, except to the state, for an act done or omitted in connection with the performance of their respective duties under this article.

(k) The commissioner shall take, prescribe, and file the oath of office prescribed by law. The commissioner, chief deputy commissioner, and each attorney or investigator designated by the commissioner are police officers of the state and shall have all the powers and duties of police officers in making arrests for violations of this article, or in serving any process, notice, or order connected with the enforcement of this article by whatever officer, authority, or court issued and shall comprise the enforcement department of the division and are considered a criminal justice agency for purposes of IC 5-2-4 and IC 10-13-3.

(l) The provisions of this article delegating and granting power to the secretary of state, the securities division, and the commissioner shall be liberally construed to the end that:

- (1) the practice or commission of fraud may be prohibited and prevented;
- (2) disclosure of sufficient and reliable information in order to afford reasonable opportunity for the exercise of independent judgment of the persons involved may be assured; and
- (3) the qualifications may be prescribed to assure availability of reliable broker-dealers, investment advisers, and agents engaged in and in connection with the issuance, barter, sale, purchase,



transfer, or disposition of securities in this state.

It is the intent and purpose of this article to delegate and grant to and vest in the secretary of state, the securities division, and the commissioner full and complete power to carry into effect and accomplish the purpose of this article and to charge them with full and complete responsibility for its effective administration.

(m) Copies of any statement and documents filed in the office of the secretary of state and of any records of the secretary of state certified by the commissioner shall be admissible in any prosecution, action, suit, or proceeding based upon, arising out of, or under this article to the same effect as the original of such statement, document, or record would be if actually produced.

(n) IC 4-21.5 and any rules of practice adopted by the securities division are applicable to administrative proceedings under this article.

SECTION 3. IC 23-20-1-4, AS ADDED BY P.L.114-2010, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. As used in this chapter, "out-of-pocket loss" means an amount equal to:

(1) the amount of restitution ordered under ~~any of the following~~:

a:

(1) ~~A~~ (A) final court order; or

(2) ~~A~~ (B) final administrative order; **minus**

(2) **any amounts paid to the victim from the party ordered to pay restitution under the court order or administrative order.**

SECTION 4. IC 23-20-1-23, AS ADDED BY P.L.114-2010, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 23. An award under this chapter may not exceed the lesser of the following:

(1) ~~Fifteen~~ **Twenty-five** thousand dollars (~~\$15,000~~): **(\$25,000)**.

(2) Twenty-five percent (25%) of the amount of the out-of-pocket loss.

SECTION 5. IC 34-30-2-96.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 96.1. IC 23-19-4.1-8 (Concerning acts by broker-dealers and qualified individuals regarding endangered adults).**

